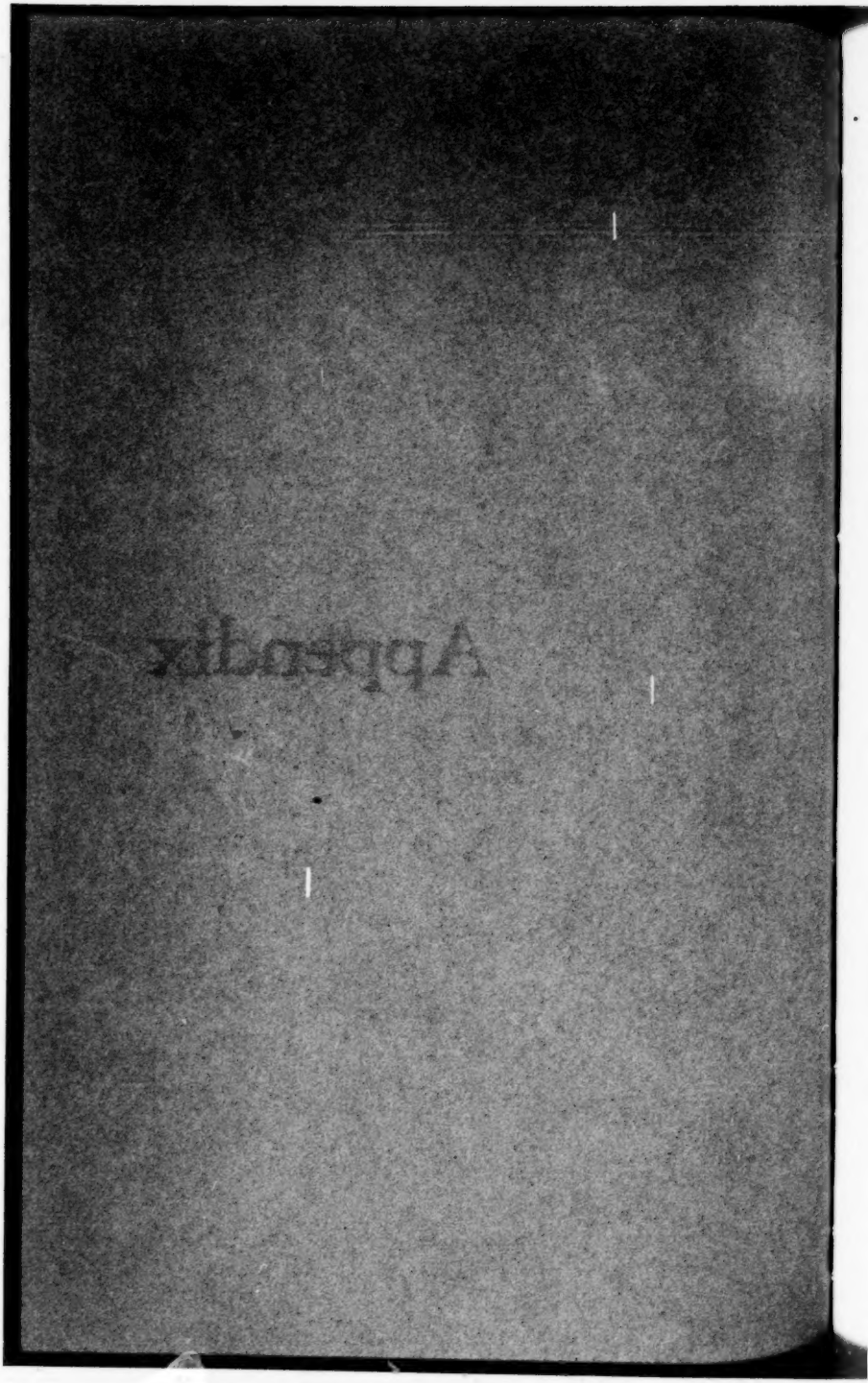


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APPENDIX A

ST. LOUIS POST-DISPATCH, TUESDAY, FEBRUARY 9, 1954

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A Judicial Outrage

A terribly wrong decision has just come from the "new" Supreme Court in a case involving one of the most basic of liberties—the right of the citizen to be secure in his own home against "unreasonable searches and seizures."

There are a shocking number of things wrong with this 5-to-4 decision, but undoubtedly the most distressing aspect of it is the fact that Chief Justice Warren is on the side that shuts its eyes to justice under the Constitution. Indeed it is by the vote of the new Chief Justice that the scales tip against the civil rights views of Justices Black, Douglas, Frankfurter and Burton and in favor of the strange position of Justices Reed, Jackson, Clark and Minton.

By this closest of divisions Chief Justice Warren and four of his colleagues refuse to overturn a state conviction based on evidence obtained under circumstances so revolting that they would reject the same evidence and conviction in a federal case. Indeed the trampling of constitutional rights is so offensive that Chief Justice Warren joins Justice Jackson, who wrote the majority opinion, in recommending that the record of the case be sent to the United States Attorney General. Their obvious intent is to suggest that the Department of Justice ought to investigate the possibility of indicting and prosecuting state officers who have so little regard for the Bill of Rights.

Chief Justice Warren and Justice Jackson base this extraordinary proposal on the fact that federal laws and the Federal Constitution make it a crime for state officials to deprive a citizen of rights secured to him by the Fourteenth Amendment, including the right to be secure against unreasonable search.

If the Fourteenth Amendment is to be used to punish officers for gathering illegal evidence, then the same Amendment should be used to void a conviction illegally obtained. How can the Amendment apply to those who commit a wrong and not apply to the wrong committed?

* * *

The case is a basic test under the Bill of Rights raised by Patrick E. Irvine of Long Beach, Calif., after invasions of his premises that would be little if any worse under police state rule in Communist satellites.

Now it happens that Patrick Irvine was a horse-race bookmaker. As a gambler he purchased a $50 federal gambling tax stamp. By looking at the list of federal gambling stamp purchasers, the police in Long Beach knew that much, but not enough for prosecution.

To make a California case, the Long Beach police sent a locksmith to the Irvine home in his absence (Dec. 1, 1951) to devise a key. With this key the police entered the house and installed a microphone. Then they strung wires to the microphone from a garage through a hole which they bored in the roof. They listened in by means of receivers in the garage.

Not satisfied with the results, the police entered the house again and shifted the microphone to the bedroom. Three weeks later they moved it to a closet. There the device

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stayed until it had "served its purpose," and thus led to Patrick Irvine's conviction under state law. At no time was a search warrant used.

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We do not in the slightest approve the defendant's illegal business. Had he been tracked down and prosecuted fairly, he would have nothing to complain against. But he was not apprehended fairly. He was not convicted fairly. The outrage that can be visited on this miserable gambler can overtake any other citizen.

Next to Chief Justice Warren's dismaying enlistment in the camp of the Mintons and Reeds, the worst aspect of the decision is the astonishing position of Justice Clark. This former Attorney General says he thinks the Supreme Court made a mistake when, in 1949, it decided the case of Wolf vs. Colorado, the precedent on which the Irvine vs. California judgment is based. Justice Clark says he would have voted against the Wolf decision had he been on the Supreme Court at that time. But now he says he feels obligated to follow its mistaken rule.

Justice Clark is not obligated to follow any decision he does not believe in. Can it be that he is so little familiar with the history of the bench on which he sits that he does not know that Justices and the court have reversed themselves many times when convinced of error?

What has been approved in this case is, as Justice Douglas said, as revolting as the odious Writs of Assistance against which the great patriot James Otis cried out in colonial times. Once again the Supreme Court has joined in eroding the liberties of the American people.

• • •

This case should be reheard at the present term. Chief Justice Warren should have a chance to reverse himself promptly. Justice Clark should have an opportunity to straighten himself out. The Supreme Court should wipe this judicial outrage from its record before its already great damage is vastly magnified by lawless police in cities and towns throughout the country.

A judgment so rank will not stand for long. The quicker it is expunged the better it will be!

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APPENDIX B

Tuesday, February 9, 1954 S Los Angeles Herald & Express

SCOTT BLASTS IRVINE RULING

Attorney Joseph Scott today hit at the "creeping philosophy which is gnawing at the constitutional rights of the private citizen."

In a Lincoln Day address before the American Legion Luncheon Club, Scott referred to the bizarre decision of the Warren-headed United States Supreme Court that upheld by a 5 to 4 vote the bookmaking conviction of Patrick E. Irvine of Long Beach—yet lashed the "search and seizure" methods of the Long Beach police.

"All of the literature and hair-splitting phrases used do not eliminate the bald naked fact that the police invaded the home and placed a microphone therein, so that they could hear every word said in the Irvine household for more than a month," Scott said.

"While one of the members of the Supreme Court said, 'a sturdy self-respecting Democratic community should not put up with lawless police and prosecutors,' nevertheless the accused stands convicted and condemned notwithstanding the crude breach of his constitutional rights," he continued.

"It may be well to remind you earnest patriotic men of the Legion," Scott said, "to go further back than today's dictum to the solemn philosophy of the founding fathers that this is a government of laws and not of men."

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